

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,

Defendant.

Civil Action No. 41-1395 (WCC)

~~PROPOSED~~

STIPULATION AND ORDER

In the matter of the Application for the
Determination of Reasonable License Fees for
Performances via Wireless Transmissions and
Internet Transmissions by

AT&T WIRELESS f/k/a CINGULAR WIRELESS

IT IS HEREBY STIPULATED AND AGREED, by and among the American Society of Composers, Authors and Publishers ("ASCAP") and AT&T Mobility LLC f/k/a Cingular Wireless ("AT&T")¹ (collectively, the "Parties") that:

1. The Parties shall complete fact discovery by **May 18, 2009**, provided that the Parties shall serve no additional written discovery requests and shall notice no further depositions beyond that discovery which already has been served, noticed or subpoenaed as of the date of this Proposed Stipulation and Order;

¹ AT&T has advised ASCAP that AT&T Mobility LLC is the successor in interest to Cingular Wireless, rather than AT&T Wireless, as indicated in the caption. ASCAP will seek permission of the court to update the caption accordingly once it has verified this information.

4/20/09

2. On or before **May 18, 2009**, the Parties shall disclose their experts in accordance with Rule 26 of the Federal Rules of Civil Procedure;

3. AT&T shall file its summary judgment motion concerning ringtones on or before **May 22, 2009**; ASCAP's response thereto shall be filed on or before **June 12, 2009**; AT&T's reply brief shall be filed on or before **June 24, 2009**; and, *amici* filings, if any, shall be filed on or before **July 1, 2009**; and ASCAP undertakes that it shall ask the Court in connection with ASCAP's separate rate court proceeding against Celco Partnership d/b/a Verizon Wireless ("Verizon") (the "Verizon Proceeding") to defer issuing any ruling or setting any interim fee with respect to the question of whether ringtones constitute public performances until after AT&T files its opening brief on May 22, 2009; ASCAP agrees to make the foregoing request in writing in its reply to Verizon's response to ASCAP's interim fee proposal in the Verizon Proceeding which reply is currently due to be served in the Verizon Proceeding on or before April 23, 2009;

4. On or before **June 4, 2009**, ASCAP shall serve any initial expert reports on AT&T;

5. On or before **July 2, 2009**, AT&T shall serve any initial or rebuttal expert reports on ASCAP;

6. On or before **July 23, 2009**, ASCAP shall serve any expert rebuttal reports on AT&T;

7. On or before **August 6, 2009**, AT&T shall serve any expert rebuttal reports on ASCAP;

8. The Parties shall complete expert discovery by **August 28, 2009**;

9. The Parties shall file any Court-approved dispositive motions on or before **September 15, 2009**, not inclusive of AT&T's proposed ringtone motion, which shall be governed by Paragraph 3 above; dispositive motion response briefs shall be filed by **October 6, 2009**; and, dispositive motion reply briefs shall be filed by **October 13, 2009**;

10. The Parties shall appear for a pretrial conference on **October 16, 2009, at 11:15 a.m.**

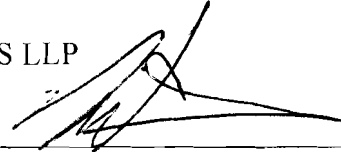
Nothing in this Scheduling Order shall prevent either party from asking the Court to set additional dates or otherwise modify this Scheduling Order.

(Signature Pages Follow.)

The parties, by their counsel, hereby consent to the foregoing Order:

Dated: New York, New York
April 17, 2009

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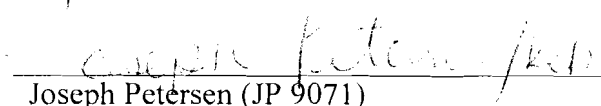
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*Attorneys for American Society of
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Dated: New York, New York
April 17, 2009

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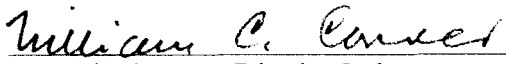
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*Attorneys for Applicant AT&T Mobility
LLC*

SO ORDERED.

Dated: White Plains, New York
April 20, 2009



Sr. United States District Judge